

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

EDWARD C. GELLOCK,

Plaintiff,

v.

PRISON HEALTH SERVICES, INC.,
et al.,

Defendants.

Civil Action No. 07-8 Erie

MEMORANDUM ORDER

_____ Plaintiff's civil rights complaint was received by the Clerk of Court on January 19, 2007 and was referred to Chief United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Chief Magistrate Judge's report and recommendation, filed on November 30, 2007 [38], recommended that: (i) the motion to dismiss amended complaint filed by Defendants Prison Health Services, Inc., and Mark Baker, M.D. [15] be granted in part and denied in part; and (ii) the motion to dismiss Plaintiff's first amended complaint filed by Defendants PA. Department of Corrections, Deputy Supt. Nancy Giroux, and Maxine Overton, R.N. [22] be granted in part and denied in part. The parties were allowed ten (10) days from the date of service in which to file objections. Plaintiff subsequently received an enlargement of time up to and including January 16, 2007 in which to file a response to the Defendants' motions and/or objections to the Report and Recommendation. Notwithstanding this, no objections have been filed to date by Plaintiff. Defendant Prison Health Services, Inc. filed partial objections [39] to the Report and Recommendation on December 10, 2007. After de novo review of the complaint and documents in the case, together with the report and recommendation and the Defendant's objections thereto, the following order is entered:

AND NOW, this 8th day of February, 2008,

IT IS ORDERED that:

1. The motion to dismiss amended complaint filed by Defendants Prison Health Services, Inc. ("PHS") and Mark Baker, M.D. [15] be, and hereby is, DENIED as to: (a) Plaintiff's Eighth Amendment claim against Defendant PHS premised upon its alleged unconstitutional policy of providing inadequate medical care, and (b) Plaintiff's state law negligence claims against PHS. In all other respects, said motion is GRANTED; and
2. The motion to dismiss Plaintiff's first amended complaint filed by Defendants PA. Department of Corrections, Deputy Supt. Nancy Giroux, and Maxine Overton, R.N. (the "DOC Defendants") [22] be, and hereby is, DENIED as to: (a) Plaintiff's Eighth Amendment claim against the DOC Defendants in their official capacities, to the extent Plaintiff seeks only declaratory and injunctive relief; (b) Plaintiff's Eighth Amendment claims against Defendants Giroux and Overton in their individual capacities; (c) Plaintiff's retaliation claim related to the alleged confiscation of his personal property; and (d) Plaintiff's state law negligence claim against Defendant Overton. In all other respects, said motion is GRANTED.

The report and recommendation of Chief Magistrate Judge Baxter, filed on November 30, 2007 [38], is adopted as the opinion of this Court.

s/ SEAN J. McLAUGHLIN

Sean J. McLaughlin
United States District Judge

cc: all parties of record
U.S. Magistrate Judge Baxter